

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 90-421-T - ORDER NO. 91-126

February 21, 1991

IN RE: Application of Robert E. Brizendine,)
Trustee for Brown Transport Corporation)
to Transfer Class E Certificate of) ORDER
Public Convenience and Necessity to)
Skyline Transportation, Inc.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed by Robert E. Brizendine, Trustee in Bankruptcy for Brown Transport Corporation (the Transferor), whereby the Transferor seeks certain relief in the nature of approval of the transfer of its Certificate of Public Convenience and Necessity to Skyline Transportation, Inc. (the Transferee).

Subsequent to the initiation of this proceeding, the Commission Staff instructed the Transferor to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. Petitions to Intervene were filed on behalf of Southeastern Freight Lines, Inc. and Greenwood Motor Lines, Inc.

A public hearing was held on December 20, 1990 at 11:00 a.m.

in the Hearing Room of the Commission at 111 Doctors Circle, Columbia, South Carolina, with the Honorable Marjorie Amos-Frazier presiding. Robert L. Stoddard, Esquire, represented the Transferor; F. Lee Prickett, Jr., Esquire, represented Southeastern Freight Lines, Inc.; and Sarena D. Burch, Esquire, represented the Commission Staff. Greenwood Motor Lines, Inc. did not appear at the proceeding.

The Transferor presented the testimonies of William H. Reed, Martin R. Darby, Mark A. Fields, and Bill Buckley in support of its Application. Southeastern Freight Lines, Inc. presented the testimonies of Robert Zuelsdorf and John Rader in support of its position.

In order for the Commission to approve the transfer, the Commission must find and conclude that the requirements of Commission Regulation 103-136 have been satisfied. R. 103-136 provides in pertinent part that:

The Commission shall approve an application for... sale or transfer of a certificate made under this section upon finding (1) that sale... will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate... is fit, willing and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application for approval of the sale... of said certificate, or, in lieu thereof, that any suspension of service exceeding thirty (30) days shall have been approved by the Commission... No Sale... of a certificate will be approved where such action would be destructive of competition or would create an unlawful monopoly.

The intervenor alleged during the hearing that the application

for sale and transfer of Certificate No. 2540 to Skyline Transportation, Inc. and the application for sale and transfer of Certificate No. 8023 to Averitt Express, Inc. represent applications to transfer duplicate authority and that this transfer is in violation of S.C. Code Ann. Section 58-23-340 (1976), as amended.

Upon consideration of the evidence in the record the Commission makes the following findings and conclusions:

1. Based on the testimony of witness Reed, the Commission finds that:

a. Skyline presently operates in interstate commerce under authority granted by the ICC serving customers in the South Carolina towns of Greer, Liberty, and Fort Mill with a terminal facility in Greenville.

b. Skyline operates 96 tractors and 247 trailers system wide with 325-350 employees.

c. Skyline has an extensive driver training and hiring program to ensure safety of operations.

2. Based upon the above findings, the Commission concludes that Skyline is fit, willing, and able to perform the necessary services and that the transfer of the Certificate will not adversely affect the service to the public.

3. Based on the testimony of Witness Reed and a review of the Commission's files, the Commission finds and concludes that service to the public has been continuously offered and reasonably provided by the transferor for a period of twelve (12) months prior to the filing of the application for transfer and that any suspension of

service has been handled in compliance with the applicable Commission regulation.

4. R. 103-136 (4) states that the issue of public convenience and necessity must be addressed where the provisions of subsection(3) of the above rule are not met, i.e. where there has not been compliance with the requirement of twelve (12) month's service prior to the application. The provision does not apply to this application. The Certificate in question was suspended pursuant to this regulation and therefore the Applicant was in compliance with R. 103-134 (4) (3). Therefore, the Commission concludes that the issue of public convenience and necessity does not need to be addressed in this case.

5. Based on the testimony of witness Reed and certain information contained in the Commission's files, the Commission finds that there are currently on file with the Commission the Application of Robert E. Brizendine, as trustee in bankruptcy, for the sale and transfer of Certificate No. 2540 held by Brown Transport Corp. to Skyline Transportation, Inc. and the Application of Robert E. Brizendine, as trustee in bankruptcy for the sale and transfer of Certificate No. 8023 held by Brown Transport Truckload, Inc. to Averitt Express. These certificates are held by two separate corporate entities.

6. Based on the above findings, the PSC concludes that these applications do not transfer duplicate authority.

7. S.C. Code Ann. Section 58-23-340 (1976, as amended) states:

Notwithstanding custom or usage or any regulation, or

other provision of law, it is unlawful for any person to sell, lease, or otherwise transfer a certificate of public convenience and necessity issued or authorized to be issued after July 1, 1983, under the provisions of Chapter 23 of Title 58 for money, goods, services, or any other thing of value. A certificate may be transferred incident to the sale or lease of property or assets owned or used by a regulated motor carrier, provided the approval of the Commission for the transfer of the certificate is first obtained and that the certificate itself is not transferred for value or utilized to enhance the value of other property transferred. Nothing herein shall affect the sale, lease or otherwise transfer of a certificate of public convenience and necessity issued prior to July 1, 1983.

8. Based on the testimony of witness Reed, the Commission finds that the transfer of Certificate No. 2540 by the bankruptcy court and the trustee to the Applicant is a sale and shows a consideration of \$500.00.

9. The Commission concludes, based on the above finding, that because it is unlawful to sell or otherwise transfer a certificate of public convenience and necessity issued after July 1, 1983, for money, goods, services or any other thing of value, that the transfer cannot be approved unless the contract between the trustee and the Applicant is amended to exclude the consideration of \$500.00.

IT IS THEREFORE ORDERED:

1. That the proposed transfer of Certificate of Public Convenience and Necessity No. 2540 from the Transferor to the Transferee cannot be approved until the contract between the trustee and the Applicant is amended to omit the consideration of \$500.00 and this amended contract is filed with the Public Service Commission.

2. That after the amended contract is filed with the PSC, the

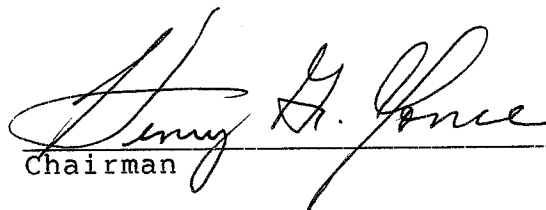
Transferee file the appropriate license fees and other information required by S.C. Code Ann., Section 58-23-10 et seq. (1976), as amended, and by R. 103-100 through R. 103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann., Section 58-23-10, et seq., (1976), as amended, and the applicable provisions of R. 103-100 through R. 103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26, (1976), as amended, a certificate shall be issued to the Transferee authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein shall not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:

VICE


Executive Director

(SEAL)